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REMARKS/ARGUMENTS

Claims 1, 7, 11, 12, 18, 21, 23 and 24 have been amended. Claims 9, 10 and 17 have been cancelled. The limitations of claims 9 and 10 have been added to claim 1. The limitation of claim 17 has been added to claim 12. Corresponding limitations have been added to claims 21 and 24. The dependency of claims 7, 11, 18 and 23 has been changed.

35 U.S.C. § 102(e) Claim Rejections

The Examiner has maintained the rejection of claims 1 to 3, 6 to 14 and 16 to 24 under 35 U.S.C. § 102(c) as being anticipated by Noel *et al.*, U.S. Publication No. 2005/0032539 (hereinafter referred to as Noel). Applicant respectfully traverses the rejection.

Controlling case law has frequently addressed rejections under 35 U.S.C. § 102. "For a prior art reference to anticipate in terms of 35 U.S.C. Section 102, **every element** of the claimed invention **must be identically** shown in a single reference. "Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 677, 7 U.S.P.Q.2d 1315, 1317 (Fed. Cir. 1988; emphasis added). The disclosed elements must be arranged as in the claim under review. See Lindemann Machinefabrik v. American Hoist & Derrick Co., 730 F.2d 1452, 1458, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984). If any claim, element, or step is absent from the reference that is being relied upon, there is **no** anticipation. Kloster Speedsteel AB v. Crucible, Inc., 793 F.2d 1565, 230 U.S.P.Q. 81 (Fed. Cir. 1986; emphasis added). The following analysis of the present rejections is respectfully offered with guidance from the foregoing controlling case law decisions.

Claim 1 has been amended as follows:

A method of messaging during an active half-duplex session between a plurality of user devices capable of half-duplex voice functionality, the method comprising:

a first user device of said plurality of user devices while in a receiving in half-duplex (RHD) mode for an active half-duplex session, transmitting a transmit channel request message (TCRM) to a network, the TCRM indicating a request from the first user device to transmit on the transmit channel;

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the network forwarding the TCRM to a second user device of said plurality of user devices while the second user device is in a transmitting in half-duplex (THD) mode for the active half-duplex session;

the TCRM including an identification of the first user device; ~~and~~

the TCRM including a qualifier flag at least when the TCRM is forwarded to the second user device;

the second user device receiving the TCRM[-]; ~~and~~

the second user device performing extended functionality in response to a value of the qualifier flag.

In rejecting the claims in view of Noel, the Examiner refers to paragraphs [0004], [0019] to [0023] and [0025] of Noel. Paragraphs [0004] and [0019] to [0022] deal with the “normal” operation of Noel as shown in the flow chart of Figure 3. Paragraphs [0023] and [0025] deal with the “interrupt function” of Noel as shown in Figure 4.

A. The “Normal” Operation of Noel

i) The Message

Noel teaches mobile devices 110 in a wireless network 130. The mobile devices 110 are connected to a push-to-talk (PTT) server 140 (see paragraphs [0019] and [0020] of Noel). In the “normal” operation of Noel, a call originator selects the participants for the call. The identities of the participants are stored in a PTT server. Each of the participants in the call is assigned a priority level. The priority level is stored in the PTT server. The call then begins with the call originator communicating with the other participants via the mobile device 110 (see paragraph [0021] of Noel). Thus, it is important to note that the identity and priority of each of the participants is stored in the PTT server 140. It is not stored in the mobile 110.

“As the call progresses, a participant may want to speak while another participant is currently speaking”. In order to do so, the participant who wishes to speak can press a push-to-talk button on the mobile device 110. “This request is received by the PTT server 140 (230)”. The request

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is not received by the mobile device of the participant who is currently speaking. “After the request is received, the PTT server 140 compares the assigned priority level of the call participant initiating the request with the priority level of the current speaker (240)”. If the call participant initiating the request has a lower priority level than that of the current speaker, the call participant initiating the response is placed in a queue in the PTT server 140. No message whatsoever is sent to the participant who is currently speaking (see paragraph [0022] of Noel). This is in contrast to claim 1 of the present application in which the request is sent to the device which is transmitting.

The other possibility is that the participant who wants to speak has a higher priority level than the current speaker. If this is the case, then “a message is sent by the PTT server 140 to each mobile device 110... indicating a change in speaker is set to occur (270). Concurrent with the change of speaker message being sent, the current speaker loses their ability to transmit speech and is placed in the queue in an order appropriate for her assigned priority level (280)” (see paragraph [0022] of Noel).

This is well illustrated by reviewing the flow chart in Figure 3 of Noel. The server receives the request 230 from a person wishing to speak. The decision step 240 is performed by the server. If the requester has a lower priority level, then following the “NO” branch of the flowchart, the requester is placed in a queue at step 250 and the message is sent to the requester at 260. In this branch, no message is ever sent to any device other than the requesting device. In the other branch of the decision 240 performed by the server, a message is sent to the participants. However, this message is not a message indicating that the requestor wishes to speak on the transmit channel. It would make no sense to send such a message in the normal operation on Noel because the mobile devices have no control over who will speak. The determination is made solely by the PTT server 140. Instead, the message simply indicates that a change of speaker will occur at step 270. A message which indicates that a change of speaker is set to occur can in no way be construed to be a transmit channel request message indicating that the requestor requests to use the transmit channel.

In the Official Action, the Examiner took the position that the transmit channel request message (TCRM) was not necessarily a message requesting to transmit on the transmit channel. Claim 1

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has been amended to clearly recite that the transmit channel request message indicates that the first user device has requested use of the transmit channel. This is a completely different message than the message being sent in the "normal" operation of Noel. The message of the present claims is a request for the use of a channel. In contrast, in Noel, the message sent is a notice that the current speaker will change. It is not a request because in the "normal" operation of Noel as described in paragraphs [0019] to [0022], the current speaker is never sent the request from the participant wanting to speak. The request travels only as far as the PTT server 140. The determination of who can speak is made only in the PTT server 140. If the PTT server determines that the person wanting to speak has a lower priority level, no message at all is sent to the mobile device of the person currently speaking. If the PTT server 140 determines that the person wishing to speak has a higher priority, again no request is sent to the device of the person currently speaking. Instead, what is sent to the person currently speaking is simply a notice that the speaker will change. This notice is sent concurrently with the change of speaker. Thus, the "normal" operation of Noel never transmits to the second user device a transmit channel request message indicating that the first user device has requested use of the transmit channel as claimed in claim 1 of the present application. Since this element of claim 1 is clearly not taught, claim 1 is not anticipated.

ii) The Identity of the Participant Who Wants to Speak

Further, claim 1 teaches that the request includes the identity of the participant who wants to speak. The Examiner's entire position in paragraphs 7 and 8 of the Official Action concerning Noel is based on this "normal" operation of Noel. Since the "normal" operation of Noel never sends a message to the current speaker identifying the participant who wants to speak, this element of claim 1 is also not taught by Noel. Thus, claim 1 and the claims that depend therefrom, are not anticipated.

B. The "Interrupt" Function of Noel

i) The Identity of the Participant who wants to Speak

In paragraph 4 of the Official Action, the Examiner makes reference to paragraphs [0023] and [0025] of Noel. These paragraphs describe the flowchart of Figure 4 in Noel.

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The interrupt function of Noel gives a listener the option of pressing an interrupt button to request to be able to speak if that call participant has an urgent matter to discuss. As explained in paragraph [0025] of Noel, “[o]nce the interrupt button is pressed, the PTT server 140 sends a message to the current speaker that one of the call participants wants to interrupt the call on a urgent basis (450). After the message is received by the mobile device 110 of the current speaker, the current speaker has the option of allowing the call participant initiating the request to speak or placing the call participant into the queue”. Nowhere is it taught in paragraph [0023] or [0025] that the message sent to the mobile device 110 of the current speaker includes the identity of the call participant who is requesting to talk on a urgent basis. The message is only that one of the participants wants to interrupt. The message is only that one of the participants wants to interrupt. This is in contrast to claim 1 which clearly recites that the message sent to the mobile device of the speaker contains the identity of the first user device that is requesting to transmit on the transmit channel. Since this element of claim 1 is clearly not taught by the “interrupt” function of Noel, claim 1 is not anticipated by Noel.

ii) A Qualifier Flag and Extended Functionality

Further amendments to claim 1 also render claim 1 novel over Noel.

In particular, claim 1 has been amended to incorporate the limitations of unamended claims 9 and 10. Claim 1 now recites that the TCRM includes a qualifier flag when the TCRM is forwarded to the second user device and extended functionality is performed by the second user device performed in response to a value of the qualifier flag. There is no hint or suggestion in Noel that the message sent to the participant who is talking when the interrupt button is pushed contains any qualifier flag for performing extended functionality. The message being sent is only a request to interrupt the call. This is supported by the flow chart of Figure 4 of Noel that indicates at step 440 that the interrupt button is pressed to interrupt the call. The message indicating the request is displayed at step 450 and at step 460 the interruption is either permitted or not. Noel does not teach or suggest any additional functionality in the request. Since this element of claim 1 is not taught or suggested by Noel, for this further reason, the claim 1 is not anticipated by Noel.

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Claims 2, 3, 6 to 8 and 11 depend from claim 1 and are novel for at least the same reason. Claim 12 has been amended to incorporate limitations corresponding to the amendments made to claim 1 and is novel for at least the reasons outlined above. Claims 13, 14, 16 and 18 to 23 ultimately depend from claim 12 and are novel for at least the same reasons. Claim 24 has been amended in a comparable manner to claim 1 and is novel for at least the same reasons.

35 U.S.C. § 103 Claim Rejections

The Examiner has rejected claim 4 under 35 U.S.C. 103(a) as being unpatentable over Noel in view of Stubbs, U.S. Patent No. 6,930,994.


The Examiner points to Stubbs as teaching wherein the half-duplex session is a voice communication session compliant with at least one system selected from the group of iDEN.TM., 1XRTT CDMA, GSM/GPRS, UMTS, and TDMA. Claim 4 depends from claim 1. Even if Stubbs teaches what is alleged by the Examiner, Stubbs does not overcome the deficiencies of Noel outlined above concerning claim 1. According, the combination of Noel of Stubbs does not render claim 4 obvious.

No further search is necessitated by the amendments made to the claims.

In view of the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw the Final Action.

Respectfully submitted,

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